

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

PAMELA A. AHMED, Plaintiff,)	
v.)	CIVIL ACTION NO. 1:22-00190-KD-N
JOHNSON & JOHNSON HEALTH CARE SYSTEMS, INC., and MEDICAL DEVICE BUSINESS SERVICES, INC., <i>also known as</i> <i>Depuy Orthopaedics, Inc.,</i> Defendants.)	

ORDER

This civil action is before the undersigned Magistrate Judge on review *sua sponte* of the Court's subject matter jurisdiction.¹ This case was removed from the Circuit Court of Mobile County, Alabama, under 28 U.S.C. § 1441 by the Defendants, with the Notice of Removal (Doc. 1) alleging diversity of citizenship under 28 U.S.C.

¹ “It is . . . axiomatic that the inferior federal courts are courts of limited jurisdiction. They are ‘empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,’ and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, “it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Id.* at 410. “[A] court should inquire into whether it has subject matter jurisdiction at the earliest possible stage in the proceedings.” *Id.* See also *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006) (“[C]ourts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”).

“[R]emoval jurisdiction is no exception to a federal court’s obligation to inquire into its own jurisdiction.” *Univ. of S. Ala.*, 168 F.3d at 410. “[T]here is a presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of remand.” *Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1050 (11th Cir. 2001).

§ 1332(a) as the sole basis for the Court’s subject matter jurisdiction. *See* 28 U.S.C. § 1446(a) (“A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal...containing a short and plain statement of the grounds for removal...”); *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 (11th Cir. 1997) (generally, “[i]n a given case, a federal district court must have at least one of three types of subject matter jurisdiction: (1) jurisdiction under a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).”).

Where, as here, a case is removed from state court, “[t]he burden of establishing subject matter jurisdiction falls on the party invoking removal.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 411–12 (11th Cir. 1999). *Accord, e.g., City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313 (11th Cir. 2012) (“The removing party bears the burden of proof regarding the existence of federal subject matter jurisdiction.”). “A defendant may remove an action to a district court that would have original jurisdiction if complete diversity between the parties exists and the amount in controversy exceeds \$75,000.” *City of Vestavia Hills*, 676 F.3d at 1313 (citing 28 U.S.C. § 1332). “Diversity jurisdiction requires complete diversity; every plaintiff must be diverse from every defendant.” *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998). “A party removing a case to federal court based on diversity of citizenship bears the burden of establishing the citizenship of the parties.” *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (per curiam). *See also, e.g., Ray v. Bird & Son & Asset Realization Co., Inc.*, 519 F.2d 1081, 1082 (5th Cir. 1975) (“The burden of pleading

diversity of citizenship is upon the party invoking federal jurisdiction . . .” (citing *Mas v. Perry*, 489 F.2d 1396 (5th Cir. 1974)).

The Plaintiff, a natural person, is only alleged to be a “resident” of Alabama. (See Doc. 1 ¶ 5, PageID.2; Doc. 1-2, PageID.9). The law of this circuit is clear that “[c]itizenship, not residence, is the key fact that must be alleged . . . to establish diversity for a natural person[,]” *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994) (emphasis added), and that “[c]itizenship is equivalent to ‘domicile’ for purposes of diversity jurisdiction. A person’s domicile is the place of his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257-58 (11th Cir. 2002) (citations, quotations, and footnote omitted). That is, “domicile requires both residence in a state and ‘an intention to remain there indefinitely....’ ” *Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) (quoting *McCormick*, 293 F.3d at 1258 (internal quotation marks omitted)) (emphasis added). See also *Mas*, 489 F.2d at 1399 (“For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient.”).²

² While “[r]esidence alone is not the equivalent of citizenship, ... the place of residence is *prima facie* the domicile” when there is an evidentiary challenge to a party’s citizenship. *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). *Accord Slate v. Shell Oil Co.*, 444 F. Supp. 2d 1210, 1215 n.9 (S.D. Ala. 2006) (Steele, J.) (“[W]hile the two concepts are analytically distinct, a party’s place of residence is *prima facie* evidence of his domicile.”). Nevertheless, the fact that residence may be *prima facie evidence* of domicile does not relieve the party invoking diversity jurisdiction of the burden of alleging a natural person party’s place of domicile/citizenship, rather than simply that party’s place of residence. The Eleventh Circuit has repeatedly held that mere allegations of residence do not satisfy that pleading burden. See *Travaglio*, 735 F.3d at 1269 (“As we indicated in remanding this case for jurisdictional findings, the allegations in Travaglio’s complaint about her citizenship are fatally defective. Residence alone is not enough.”); *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1342 n.12 (11th Cir. 2011) (“Ordinarily, the complaint must allege the citizenship, not residence, of the natural defendants.”); *Beavers v. A.O. Smith Elec.*

Accordingly, the Defendants allege the Plaintiff's state or foreign state of citizenship/domicile, rather than simply of residence.³

Upon due consideration, the Defendants are **ORDERED** to file and serve, no later than **MAY 18, 2022**, an amended Notice of Removal that corrects the above-described deficiency in their allegations regarding diversity of citizenship under § 1332(a).⁴ The failure to comply with this order may result in entry of a

Prods. Co., 265 F. App'x 772, 778 (11th Cir. 2008) (per curiam) (unpublished) ("The plaintiffs' complaint alleges only the residence of the nearly 100 plaintiffs, not their states of citizenship. Because the plaintiffs have the burden to affirmatively allege facts demonstrating the existence of jurisdiction and failed to allege the citizenship of the individual plaintiffs, the district court lacked subject matter jurisdiction on the face of the complaint." (internal citation and quotation omitted)); *Crist v. Carnival Corp.*, 410 F. App'x 197, 200 (11th Cir. 2010) (per curiam) (unpublished) ("The allegation that Crist is a 'resident' of Florida is insufficient for diversity jurisdiction purposes because residency is not the equivalent of citizenship." (citing *Cong. of Racial Equal. v. Clemons*, 323 F.2d 54, 58 (5th Cir. 1963) ("Diversity of citizenship, not of residence, is required under 28 U.S.C.A. § 1332. Wherever jurisdiction is predicated upon the citizenship (or alienage) of the parties, it should be noted that since residence is not the equivalent of citizenship, an allegation that a party is a resident of a certain state or foreign country is not a sufficient allegation of his citizenship." (quotation and citation omitted) (emphasis added)).

³ The Defendants, both corporations, have adequately alleged facts demonstrating their own citizenships. See 28 U.S.C. § 1332(c)(1); (Doc. 1 ¶¶ 6-7, PageID.2-3). And as the Defendants correctly point out, the citizenship of the "defendants sued under fictitious names" is disregarded for purposes of whether removal is proper under § 1332(a). 28 U.S.C. § 1441(b)(1).

The undersigned reserves judgment on whether the notice of removal adequately alleges § 1332(a)'s requisite minimum amount in controversy until the defect in alleging the Plaintiff's citizenship is remedied.

⁴ "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." 28 U.S.C. § 1653. "[T]he failure to establish a party's citizenship at the time of filing the removal notice is a procedural, rather than jurisdictional, defect." *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009) (quotation omitted). "If a party fails to specifically allege

recommendation that the Court remand this action *sua sponte* for lack of subject matter jurisdiction under 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

Additionally, the Defendants did not file disclosure statements in accordance with Fed. R. Civ. P. 7.1 (required of all “nongovernmental corporate” parties) **and** S.D. Ala. CivLR 7.1 (applicable to “[a]ll non-governmental artificial entities appearing as parties”). The Defendants are **ORDERED** to do so no later than **MAY 18, 2022.**⁵

DONE and **ORDERED** this the 11th day of May 2022.

/s/ Katherine P. Nelson
KATHERINE P. NELSON
UNITED STATES MAGISTRATE JUDGE

citizenship in their notice of removal, the district court should allow that party ‘to cure the omission,’ as authorized by § 1653.” *Id.* at 1297.

⁵ Form available at: <https://www.alsd.uscourts.gov/forms/all-forms>